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SENSITIVE
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SUBJECT: AUSTRALIA: ACCESS TO GENETIC RESOURCES IN ADVANCE
OF NEGOTIATION

REF: SECSTATE 9667

¶1. (SBU) Per instructions in reftel, Econoff visited David Dutton, Director, Environment and Sea Law Branch, at the Department of Foreign Affairs and Trade on February 12. Dutton was identified by Australia's CBD Point of Contact, Robyn Bromley, as the GOA official most responsible for access and benefit sharing information. Dutton assured econoff that Australia has a long history of taking positions consistent with U.S. views, although the U.S. is not itself a party. He described the Australian system of Access and Benefit Sharing (ABS) provisions as "horribly complicated" with multiple levels of jurisdiction and legal requirements, but said that Australia shared U.S. concerns that any future international framework on ABS issues not make it more difficult to negotiate ABS agreements or otherwise stifle legitimate research. Dutton emphasized that policies that might be most likely to diverge from best global practices would be around the issues of indigenous rights and traditional knowledge, where Australia has taken steps to ensure that the rights and benefits from resources in indigenous areas, or derived from traditional knowledge, are firmly enforced. Dutton said that he is planning to travel to the U.S. at the end of March and hopes to meet with relevant U.S. government officials dealing with ABS issues. We will follow up with additional information on this visit as it develops.

¶2. Econoff also spoke with the Commonwealth (that is, Federal Government) Genetic Resources Manager Ben Philips at the Department of Environment, Water, Heritage and the Arts (DEWHA). Philips provided details on several questions in reftel. He also noted that several other countries, including Canada, New Zealand, Mexico, China, and South Africa had either sent officials to Australia to examine the ABS system, or had had their Embassies make similar inquiries. Philips said from his point of view the current divisions over ABS fundamentals had created "mass uncertainty" for researchers, and that it had to be resolved soon. It would be better for all, Philips said, if the final outcome followed the Bonn Guidelines in substance, but any resolution that provided some degree of certainty to researchers would be better than the current debate.

¶3. (SBU) Australia has submitted a detailed submission to the CBD on national ABS arrangements. The overall goal of the Australian system is to provide a nationally consistent approach while affirming the three different levels of jurisdiction that might apply, under Australia's federal constitutional arrangements, as parties to any ABS agreement.

¶4. (SBU) Questions in reftel are answered as follows:

National Legislation

Q: What are the relevant laws and procedures that researchers must fulfill in order to conduct research about biological or genetic resources, including research permits and visas?

A: The 2000 Environmental Protection and Biodiversity Conservation Act (EPBC) provides overarching authority to the Minister for the Environment and Australian federal departments to oversee Australian policy on biodiversity and environmental protection. Legislation to govern specific access to genetic resources and ensure benefit-sharing has been established by the Federal Government, in the State of Queensland, and the Northern Territory. The other state and territory governments in Australia are considering, or are well-advanced in the process of developing similar frameworks.

Q: Which government agencies are responsible for issuing such permits and supervising researchers? Is this done at the national, state, or local level? At multiple levels? Are the terms and conditions that address the concept of mutually agreed terms for research permission and the sharing of benefits general or specific (i.e., geared to the specific collection activity)?

A: Biodiscovery in Commonwealth (Federal) areas is governed by the Environment Protection and Biodiversity Conservation Regulations 2000 (the Regulations). Under the Regulations, persons seeking access to biological resources must apply to the Department of the Environment and Water Resources for a permit. Commonwealth areas include Australia's national

CANBERRA 00000225 002 OF 004

parks system, restricted areas, and Commonwealth waters.

The Queensland Government's Biodiscovery Act 2004 sets out a framework regulating biodiscovery, with the purpose of facilitating sustainable access to Queensland's biodiversity and ensuring the fair and equitable sharing of any benefits derived from these activities with the State of Queensland. The Act applies to resources on land or waters in Queensland that are not owned or possessed privately.

The purpose of the Act is achieved through a benefit sharing regime based on contractual Benefit Sharing Agreements and Biodiscovery Plans (administered by the Department of State Development) and a permitting regime (administered by the Environmental Protection Agency) involving a single Biodiscovery Collection Authority for State lands or Queensland waters.

Biodiscovery in the Northern Territory is covered by the Biological Resources Act 2006 (the Act). Under the Act, a person who wishes to engage in biodiscovery for scientific or commercial reasons in any part of the Northern Territory must obtain a permit.

Applications for a permit can be made to the Parks and Wildlife Commission or the Fisheries Group. A permit will not be issued until the applicant has obtained written prior informed consent from the provider and a benefit-sharing agreement. Unlike in Queensland, this includes situations where the access provider is a private citizen. The Northern Territory government can also issue a certificate of provenance if requested.

Victoria has a functional administrative system for permitting that largely mirrors those found in Queensland and the NT, but has no formal legislative framework to govern it.

Tasmania is likely to implement a similar legal framework within a period of months, Philips said.

Permits for the collection of biological specimens

Q: What are the procedures for obtaining a permit to collect biological specimens? Who issues these permits? Are there general or specific terms and conditions that address the concept of mutually agreed terms on the use of these specimens and the sharing of benefits?

A: See above for description of three different authorities. According to Philips, genetic resources research in Australia is still largely at the basic biodiversity level, with little move towards commercialization, and that has meant that general terms and conditions are preferred over extremely specific contracts, as little is known about samples before they are transferred for study.

Movement of biological specimens

Q: What are the procedures, terms, and conditions for obtaining a permit to EXPORT non-CITES biological specimens (if any)? Who issues these permits?

A: DFAT is not aware of any specific regulations that govern specifically import or export of non-CITES biological specimens. Import and export of specimens would be subject to Australian quarantine and customs regulations.

Q: What are the procedures, terms, and conditions for obtaining a permit to IMPORT non-CITES biological specimens (if any)? Who issues these permits?

A: See above.

Q: Are there rules for internal shipment of specimens?

A: No.

Q: Are there additional phyto- or zoo-sanitary requirements and permits needed for movement of specimens?

A: Australian quarantine and customs requirements are famously strict and rigorously enforced, for phyto- and zoo-sanitary reasons.

CANBERRA 00000225 003 OF 004

MAT

Q: What are the relevant laws and procedures for negotiating mutually agreed terms for access to and/or use of genetic resources? Which government agencies are responsible?

A: Where not otherwise specified above, MATs would be subject to Australian Common Law. The Nationally Consistent Approach for Access to and the Utilisation of Australia's Native Genetic and Biochemical Resources provides guidance that any MAT negotiated should "give consideration to Annex I and II" of the Bonn Guidelines, and provides for model MAT agreements to be developed by the GOA.

Q: Do these agencies differentiate among uses for basic science, commercial development, and agricultural research? If so, how?

A: Australia recognizes the importance of encouraging access for non-commercial scientific research, particularly taxonomic research. To that end, the requirements for obtaining access to Commonwealth owned or managed genetic materials for non-commercial scientific research is more flexible and less involved than for commercial scientific research. In place of an access and benefit-sharing agreement, the permit applicant is simply required to obtain written permission from the access provider of the resource

to enter a Commonwealth area and remove samples.
A straightforward statutory declaration must also be made which includes agreeing to certain obligations. These include accepting the obligation to negotiate a full benefit-sharing agreement should the purpose of research and development change, and to obtain permission from the access provider before passing the sample on to anyone else.

Q: Do they require the disclosure of country of origin of genetic resources in patent applications that potentially might use those genetic resources as a condition for obtaining research, collecting, and/or export permits?

A: No.

Status of MAT and PIC in host country

Q: Are there coordinating processes (interagency groups, civil society forums, etc) for the development of MAT and PIC regulations, issues, and processes?

A: The Biodiversity Working Group is an expert level body composed of Commonwealth and State officials, from all states and territories, which drafted the Nationally Consistent Approach for Access to and the Utilisation of Australia's Native Genetic and Biochemical Resources, and meets regularly to consider ABS and other biodiversity issues. There is no federal agency with constitutional authority to override or coordinate the various statutory authorities.

Q: Has the host country identified national authorities responsible for:

-- Granting access to genetic resources?

A: The national authority (which extends only to resources on commonwealth lands or waters) is the Director for Genetic Resources Management Policy at the Department of Environment, Water, Heritage and the Arts (DEWHA).

-- Negotiating specific contracts for commercialization of genetic resources?

A: The national authority (which extends only to resources on Commonwealth lands or waters) is the Director for Genetic Resources Management Policy at the Department of Environment, Water, Heritage and the Arts (DEWHA).

-- Receiving financial benefits from ABS contracts (such as national, regional, or conservation trust funds)?

A: The Regulations require financial benefits accrue to the managers of the resources, potentially including indigenous groups or environmental trusts. Non-monetary benefits, in terms of scientific information enhancing the global store of knowledge, is a key element in model ABS agreements in Australia.

CANBERRA 00000225 004 OF 004

Did the CBD focal point have this information readily available?

A: Australia has posted all relevant information, and links to state authorities, on their website at:
www.environment.gov.au/biodiversity/index.htm 1.

Q: Does the host government have general information that it gives to foreign researchers seeking to obtain research/collecting/import/export permits? If so, please provide copies.

A: Copies of biodiversity regulations and model agreements are available at the www.environment.gov.au/biodiversity/index.html website.

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